



Department of Energy

Washington, DC 20585

June 18, 2013

Mr. Michael Morisy
MuckRock News
DEPT MR 2944
P.O. Box 55819
Boston, MA 02205-5819

Re: HQ-2013-01004-F

Dear Mr. Morisy:

This is an interim response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for "A copy of all responses sent to Congressional committees between January 1, 2008 and the date this request is processed."

In your letter, you stated: "The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage." The FOIA defines a representative of the news media as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience."

The information on the MuckRock.com website does not support your inclusion in the news media fee category. Although the site includes a "News" page, MuckRock.com is not a news organization. It is a commercial entity which provides a service at a cost. Information on the website promotes "paid products" of its public records request service.

For purposes of assessment of fees, you have been categorized under the DOE regulation at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(1), as a "commercial use" requester. Requesters in this category are charged fees for search, review, and duplication associated with the request.

You requested a waiver of all fees associated with the processing of the request. The FOIA provides that "[d]ocuments shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." See 5 U.S.C. 552(a)(4)(A)(iii).

The DOE has implemented this statutory standard for fee waivers or reduced fees in its FOIA regulation at Title 10, Code of Federal Regulations (CFR), Section 1004.9(a)(8). Pursuant to that section, I have determined that you did not provide information that satisfies the following factors considered by the DOE when applying the fee waiver criteria to make a determination:

Factor at 10 CFR 1004.9(a)(8)(ii)(A)

- The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

Factor at 10 CFR 1004.9(a)(8)(ii)(B)

- The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."



You stated that the documents you requested will be made available to the general public free of charge. However, information on the MuckRock.com website also identifies a commercial interest in disclosure of the records that you requested. You did not demonstrate that the magnitude of the public interest in disclosure is greater than the magnitude of your commercial interest in disclosure. For these reasons, your request for a fee waiver is denied.

Pursuant to 10 CFR 1004.8, you may challenge the determination to deny your request for a fee waiver by submitting a written appeal to the Director, Office of Hearings and Appeals, at HG-1/L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. You should submit the appeal within 30 calendar days of receipt of this determination.

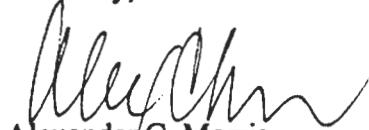
The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. The appeal must contain all elements required by 10 CFR 1004.8, including a copy of this letter. Judicial review will thereafter be available in the Federal District Court either (1) in the district where you reside; (2) in the district where you have your principal place of business; (3) in the district where the DOE records are located; or (4) in the District of Columbia.

Pursuant to 10 CFR 1004.4(e), please provide an assurance that you agree to pay processing fees. You should provide the assurance to Ms. Joan Ogbazghi of my staff by July 10, 2013. If she does not hear from you or receive the information by that date, no further action will be taken about the request.

The above referenced number has been assigned to the request and you should refer to it in any communications with the DOE about this matter. Please contact Ms. Ogbazghi at MA-90/Forrestal Building at 1000 Independence Avenue, SW, Washington, DC 20585, or on (202) 586-3595.

I appreciate the opportunity to assist you.

Sincerely,



Alexander C. Morris
FOIA Officer
Office of Information Resources